In re Wedmore, [1907] 2 Ch. 277, 280; THEOBALD ON WILLS, 7 ed., 846. In the United States the two are treated alike. *Reynolds* v. *Reynolds*, 27 R. I. 520; *Wood* v. *Vandenburgh*, 6 Paige (N. Y.) 277. If the intention of the testator was to grant a priority this intention should of course govern. See *Appeal of Trustees of University of Pennsylvania*, 97 Pa. St. 187, 200. In the absence of an expressed intent, cases where priority is allowed must be justified by the fiction of a presumed intent. Whether or not the relinquishment would inure to the benefit of the estate, it seems reasonable where the legacy is offered substantially as an equivalent for a right relinquished, to imply a desire to have this legacy paid in full even at the expense of the other legatees. This seems a more satisfactory view than arbitrarily to restrict the dower rule to its facts, as did the principal case. Of course, if the right were to a liquidated sum less than the legacy, the implication would not be justified. *In re Wedmore, supra.* But the principal case is not distinguishable in that way. An intent to give priority can reasonably be implied, it is submitted, wherever a testator conditions a legacy on the relinquishment of a right which is not obviously worth less than the legacy.

LIBEL AND SLANDER — ACTS AND WORDS ACTIONABLE — WORDS ACTIONABLE PER SE. — The defendant published a sensational and improbable story which purported to be a narration by the plaintiff of a personal experience. The plaintiff, a famous author, lecturer, and explorer, had written no such story. In a suit for libel the defendant demurred to a complaint setting out these facts. *Held*, that the demurrer should be overruled. *D'Altomonte* v. *New York Herald Co.*, 139 N. Y. Supp. 200 (Sup. Ct., App. Div.).

It is well settled that to constitute libel there need be no direct statement about the plaintiff. *Archbold* v. *Sweet*, 5 Car. & P. 219; *Maynard* v. *Fireman's Fund Ins. Co.*, 47 Cal. 207. Nor is it necessary that the defendant intend any libel. *Curtis* v. *Mussey*, 6 Gray (Mass.) 261. The publication in the principal case would lead readers to believe that the plaintiff was a writer of stories of doubtful literary merit. *Cf. Archbold* v. *Sweet, supra.* Also, by attributing to the plaintiff the recounting of personal experiences which his associates would know had never happened, the publication imputes to the plaintiff the writing of falsehoods. Words are held to be defamatory if they would be so understood by a particular class of persons. *Martin* v. *The Picayune*, 115 La. 979, 40 So. 376; *Archbold* v. *Sweet, supra.* The principle generally adopted by the courts is that the question must be left to the jury if they might reasonably find that the publication was understood as defamatory. *Dennis* v. *Johnson*, 42 Minn. 301, 44 N. W. 68; *Martin* v. *The Picayune, supra.* In the principal case the jury might reasonably find that the plaintiff's reputation for truth and for being a person of real literary ability was injured among his associates by the publication.

MUNICIPAL CORPORATIONS — FRANCHISES AND LICENSES — ESTOPPEL TO CHALLENGE VALIDITY OF ORDINANCE WHILE ENJOYING FRANCHISE UNDER IT. — A borough by ordinance granted the defendant's assignor the right to use the streets for gas on condition that they supply free gas to churches. The defendant refused to comply with the condition on the ground that the ordinance was void. *Held*, that the validity of the ordinance cannot be attacked by those enjoying a franchise under it. *Bellevue Borough* v. *Manufacturers' Light & Heat Co.*, 238 Pa. St. 388.

If the decision in the principal case is correct, it must be on the ground that since the defendant accepted benefits under the ordinance, it is now estopped to assert its invalidity. It is well settled that public policy prevents the estoppel of a municipal corporation to assert its own lack of power. *Ottawa* v. *Carey*, 108 U. S. 110; *McPherson* v. *Foster Bros.*, 43 Ia. 48. But a

city may be estopped from asserting irregularities in the exercise of a power as distinguished from entire absence of power. *Marcy* v. *Oswege*, 92 U. S. 637. And it is sometimes held that there is an estoppel against a municipal corporation when it has permitted long adverse user of public property and large expenditures thereon. *Paine Co.* v. *Oshkosh*, 89 Wis. 449. But see *London Bank* v. *Oakland*, 90 Fed. 691, 701. Even in the case of utter lack of capacity the only objection to estopping the city would seem to be the necessity of saving municipalities from the danger of the misconduct of corrupt officials. But see *Schumm* v. *Seymour*, 24 N. J. Eq. 143, 154. This objection failing where it is sought to hold the outsider, it would seem that the estoppel should exist in the circumstances of the principal case. See *New York* v. *Sonneborn*, 113 N. Y. 423, 426, 21 N. E. 121; *Buffalo* v. *Balcom*, 134 N. Y. 532, 536, 32 N. E. 7, 8.

NEGLIGENCE — DUTY OF CARE — BUSINESS CUSTOM AS A TEST OF DUE CARE. — The plaintiff, an employee of the defendant, was injured while working on one of the defendant's cars. The defendant requested a charge that it need exercise only the usual care of those engaged in the same business. *Held*, that the refusal so to charge was error. *Canadian Northern Ry. Co.* v. *Senske*, 201 Fed. 637 (C. C. A., Eighth Circ.).

In this doctrine the court has followed the language used in several other decisions in the federal courts. See *Shankweiler* v. *Baltimore & Ohio R. Co.*, 148 Fed. 195, 197; *Grand Trunk Ry. Co.* v. *Ives*, 144 U. S. 408, 416, 12 Sup. Ct. 679, 682. But the decisions scarcely bear out the conclusion that this is the sole test for the jury. But see *Chicago Great Western Ry. Co.* v. *Minneapolis, etc. Ry. Co.*, 176 Fed. 237, 242. The care others exercise should at most be only evidence of the care that a reasonably prudent man would exercise under the circumstances. See 14 HARV. L. REV. 156.

NUISANCE — RECOVERY OF DAMAGES — RECOVERY OF DAMAGES BY ONE HAVING NO RIGHT IN THE PROPERTY AFFECTED. — The defendant constructed and maintained a pond which emitted noxious air, causing the death of the plaintiff's intestate, while the latter was rightfully living in the house of his father. *Held*, that the defendant is liable for causing the death of the plaintiff's intestate by maintaining a nuisance. *Hosmer* v. *Republic Iron & Steel Co.*, 60 So. 801 (Ala.).

The early law imposed absolute liability for injury caused, without regard to the fault of the actor. As to damage done to realty this conception has, to a large extent, persisted. See article by Professor BOHLEN, 59 U. OF PA. L. REV. 298, 309, 310. Private nuisance partook of this nature, since it consisted of an injury to land or to the enjoyment or dominion of the possessor. See 3 BL. COMM., 216; COOLEY, TORTS, 3 ed., 1174. Consequently the fault of the person responsible for the nuisance was regarded as immaterial. See 59 U. OF PA. L. REV. 313, 314. It has long been recognized, however, that there is no liability for injuries purely personal, except in so far as there is fault on the part of the actor. See HOLMES, COMMON LAW, 88–90. In allowing an action on the case for nuisance by one who has no legal estate or possessory interest in land the court is historically wrong. Moreover, it is running counter to modern ideas of justice which discountenance tort liability without culpability unless there are special demands of social expediency. Here, on the contrary, there is the practical objection, which has had weight in the law, that the defendant is thereby subjected to a multiplicity of actions. See *Proprietors of Quincy Canal* v. *Newcomb*, 7 Met. (Mass.) 276, 283. The weight of authority is against the principal case. *McCalla* v. *Louisville & Nashville R. Co.*, 163 Ala. 107, 50 So. 971; *Ellis* v. *Kansas City, St. J. & C. B. R. Co.*, 63 Mo. 131; *Hughes* v. *Auburn*, 161 N. Y. 96, 55 N. E. 389; *Holly* v. *Boston Gas Light Co.*, 8 Gray (Mass.) 123. (Specifically placed on the ground that there was no negligence.) *Cf.*